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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/594,054

05/08/2007

Bernd Sievernich

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10/30/2008

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EXAMINER

SULLIVAN, DANIELLE D

ART UNIT

PAPER NUMBER

1616

NOTIFICATION DATE

DELIVERY MODE

10/30/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/594,054 | Applicant(s) SIEVERNICH ET AL. | |
| | Examiner DANIELLE SULLIVAN | Art Unit 1616 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/25/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-15 are pending. New claims 11-15 were added in the preliminary amendment filed 9/25/2006.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Kibler et al. (WO 2004/008861).

Kibler et al. discloses a herbicidal composition comprising two herbicides selected from imazapyr, imazaquin, imazamethabenz-methyl, imazamox, imazapic and imazetapyr and a chloroacetamide, acetochlor (page 23, lines 29-37). One can immediately envisage a herbicidal composition comprising imazamox and at least one herbicide selected from chloroacetamides. Thus, claims 1 and 2 are anticipated.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kibler et al. (WO 2004/008861).

Applicant's Invention

Applicant claims a composition as disclosed in above 102(b) rejection. Claims 3 and 4 limit the chloroacetamide to metazachlor. Claim 5 further adds at least one liquid and/or solid carrier.

Applicants claim a method of controlling undesired vegetation, before, during and/or after the emergence of the undesired plants, simultaneously or in succession by applying the composition. Claims 9 and 10 specify the crop treated is brassica napus. Claims 10 and 13 specify the treatment includes at least one compound selected from clomazone, atrazine and cloquintocet. Claim 14 specifies the application rate of the ingredients range from 5 to 2500 g/ha.

Determination of the scope and the content of the prior art

(MPEP 2141.01)

Kibler et al. teaches the chloroacetamides include metazachlor (page 5, lines 34-40). The compositions as herbicidal and synergistic mixtures applied to eliminate undesired plants from Brassica napus is taught on page 25, lines 20-27. Additional herbicides that may be added include cloquintocet, atrazine and clomazone (page 4, line 15; page 5, line 21; page 24, line 27). The application rates of the ingredients range from 0.2 to 5000 g/ha (page 29, lines 16-21). The herbicidal compositions contain at least one liquid and/or solid carrier and if desired, a surfactant (page 25, line 8-12). The

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ingredients may be applied simultaneously or separately pre- or post-emergence (page 28, lines 24-32).

Ascertainment of the difference between the prior art and the claims

(MPEP 2141.02)

Kibler et al. does not provide examples of the composition where the chloroacetamide is metazachlor. However, Kibler et al. teach that metazachlor is a chloroacetamide.

Finding of prima facie obviousness

Rationale and Motivation (MPEP 2142-2143)

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Kibler et al. to further include metazachlor. One would have been motivated to include metazachlor because Kibler et al. teach metazachlor is a chloroacetamide and Kibler et al. teach that chloroacetamides are combined with imazamox.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danielle Sullivan whose telephone number is (571) 270-3285. The examiner can normally be reached on 7:30 AM - 5:00 PM Mon-Thur EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Danielle Sullivan
Patent Examiner
Art Unit 1616

/Johann R. Richter/
Supervisory Patent Examiner, Art Unit 1616